

3 26-80
12.3.80.3

Monsanto

SPECIALTY CHEMICALS DIVISION

MONSANTO INDUSTRIAL CHEMICALS CO.
800 N. Lindbergh Boulevard
St. Louis, Missouri 63166
Phone: (314) 694-1000

March 26, 1980

Lone Star Industries, Inc.
3801 E. Marginal Way South
Seattle Washington 98134

Dear Mr. Wells:

This letter agreement between Monsanto Company ("Monsanto") and Lone Star Industries, Inc. ("Lone Star") sets forth the terms of our agreement regarding (i) Monsanto's supply of Vanillin Black Liquor Solids ("VBLS"), a by-product of Monsanto's vanillin production at its Seattle, Washington plant ("Monsanto Plant"), to Lone Star at its Seattle, Washington plant ("Lone Star Plant"), and (ii) Monsanto's installation and lease of certain facilities for the handling of VBLS at Lone Star's Plant.

1. TERM. This agreement shall begin on January 1, 1980 and continue through December 31, 1984, continuing thereafter from year to year until terminated by either party by giving the other party at least thirty days prior written notice.

2. QUANTITY, TITLE, AND RISK OF LOSS OF VBLS. Monsanto agrees to deliver VBLS to Lone Star's Plant, and Lone Star agrees to receive from Monsanto, and to unload, handle, store and utilize the VBLS in a safe and lawful manner at the Lone Star Plant. Lone Star agrees to accept from Monsanto as much VBLS as Lone Star can reasonably utilize, and Monsanto agrees to supply to Lone Star at least 51% of Monsanto's output of VBLS from the Monsanto Plant. Title and risk of loss of the VBLS shall pass from Monsanto to Lone Star when the VBLS passes the unloading flange of the delivering vessel or vehicle at the Lone Star Plant.

3. FEE FOR HANDLING VBLS; REVISION. Monsanto shall pay Lone Star for Lone Star's proper performance of services relating to the VBLS a Base Fee of \$12.45 per short ton (2,000 pounds) of



a unit of Monsanto Company.

AGC2E000053

March 26, 1980

VBLS delivered to and accepted by Lone Star. Within thirty days after Lone Star's acceptance of the Facilities, said Base Fee shall be revised as follows:

Revised Fee: $\frac{\text{CPI}}{216.6}$ (\$12.45)

where CPI =

Consumer Price Index for all urban consumers, not seasonally adjusted, as released by the Bureau of Labor Statistics, U.S. Department of Labor, for the most recent month for which such statistic is available.

Thereafter said fee shall be revised annually on the anniversary of the date of Lone Star's acceptance of the Facilities in accordance with the formula set forth above.

4. LEASE, RENT AND TRANSFER OF TITLE TO FACILITIES. Monsanto agrees to provide for the installation of, and to lease to Lone Star, certain facilities ("Facilities") for Lone Star's handling and storage of VBLS received from Monsanto. The term of the lease shall begin upon Lone Star's acceptance of the Facilities, which shall take place within thirty days after the Facilities have become reasonably suitable for their intended purpose, and shall continue in effect until this letter agreement terminates or expires or until Lone Star has reimbursed Monsanto for Monsanto's total actual cost of the Facilities, whichever shall first occur. It is estimated that Monsanto's cost of the Facilities will be approximately \$125,000. Monsanto agrees to provide Lone Star with copies of its receipts evidencing the cost of materials and labor for construction and installation of the Facilities. Lone Star agrees to pay Monsanto rent for the Facilities at a rate per short ton of VBLS delivered to Lone Star equal to the then-current fee paid by Monsanto for Lone Star's handling of the VBLS under this letter agreement, but such rental payments to Monsanto in any calendar year during the term of this letter agreement shall be at least 20% of Monsanto's actual cost of the Facilities. When Lone Star has reimbursed Monsanto for Monsanto's actual cost of the Facilities, Monsanto shall transfer title to the Facilities to Lone Star.

5. MAINTENANCE OF FACILITIES; TAXES; USE. Except for repairs, if any, provided by Monsanto in accordance with its limited warranty of the Facilities, Lone Star agrees to maintain the Facilities in good operating order, repair and appearance and to furnish, at Lone Star's expense, all repairs, parts, supplies,

March 26, 1980

materials and labor for such maintenance and repair after Lone Star has accepted the Facilities. Lone Star also agrees to pay taxes and assessments relating to the Facilities; except income or franchise taxes assessed against Monsanto. Lone Star shall use the Facilities during the term of this agreement only for the unloading, handling and storage of VBLS received from Monsanto.

6. LIMITED WARRANTY. (a) Monsanto will use reasonable care in connection with the Facilities to be constructed and installed at the Lone Star Plant, and agrees to use the same degree of care and diligence therein that it uses for work done on its own behalf. Monsanto agrees to pass on to Lone Star any material and workmanship warranties on the Facilities which Monsanto receives from the contractor responsible for the construction and installation of said Facilities. Except as provided above, MONSANTO MAKES NO WARRANTY, EXPRESS OR IMPLIED, RELATING TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, GOOD WORKMANSHIP, OR ANY OTHER MATTER WITH RESPECT TO THE FACILITIES.

(b) A GENERAL DESCRIPTION OF THE VBLS IS ATTACHED TO THIS LETTER AGREEMENT; HOWEVER, THE COMPOSITION OF ANY SHIPMENT OF VBLS IS EXPECTED TO VARY FROM SHIPMENT TO SHIPMENT AND TO CONTAIN OTHER MATERIALS. MONSANTO MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, RELATING TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, GOOD WORKMANSHIP OR ANY OTHER MATTER WITH RESPECT TO THE VBLS, it being understood and agreed that the VBLS is provided to Lone Star on an "AS IS" basis, "WITH ALL FAULTS".

7. CLAIMS AND LIMITATION OF LIABILITY. All claims by Lone Star for any cause whatsoever (whether based in contract, warranty, negligence, strict liability, other tort, violation of law or otherwise) shall be waived unless made in writing and received by Monsanto within 45 days after delivery with respect to claims based on VBLS, and within one year of the date of Lone Star's acceptance of the Facilities for claims relating to the Facilities. Provided that Lone Star has notified Monsanto within 10 days after delivery of a shipment of VBLS, Monsanto agrees to accept the return of any shipment of material that does not conform to the description attached and which, as a result, either substantially increases Lone Star's cost of utilizing same or makes utilization by Lone Star unlawful or impossible. Monsanto agrees to pay reasonable handling and transportation costs incurred by Lone Star for the receipt, handling and return of such material to the Monsanto Plant or other location designated by Monsanto and SUCH PAYMENTS BY MONSANTO, AND MONSANTO'S REPAIR OF THE FACILITIES WITH RESPECT TO CLAIMS ARISING THEREFROM, SHALL BE THE LIMIT OF MONSANTO'S LIABILITY AND SHALL BE LONE STAR'S EXCLUSIVE REMEDY. Monsanto shall not be liable for any loss, damage or injury to persons (including death) or to property in connection with Monsanto's performance of this letter agreement or arising from the lease, use, ownership, operation, mis-use, non-use, repair,

March 26, 1980

replacement, or removal of the Facilities by Monsanto or Lone Star or any other party, or in connection with Monsanto's supply of VBLS to Lone Star. MONSANTO'S TOTAL LIABILITY FOR ANY CAUSE WHATSOEVER (WHETHER THE BASIS OF LIABILITY IS CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, VIOLATION OF LAW OR OTHERWISE) SHALL NOT EXCEED THE HANDLING FEE PAID FOR THE VBLS WITH RESPECT TO WHICH SUCH CAUSE ARISES OR, WITH RESPECT TO THE FACILITIES, THE REPAIR OR REPLACEMENT OF SAME, AND IN NO EVENT SHALL MONSANTO BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CAUSE.

8. INDEMNITY. Lone Star assumes sole responsibility for, and shall indemnify and hold harmless Monsanto, its present, past and future employees and agents from and against any and all claims, liabilities, suits, proceedings, judgments, orders, fines, penalties, damages, losses, costs and expenses (including, without limitation, costs of defense, settlement and reasonable attorney's fees and expenses), arising out of or connected with (i) any VBLS following delivery to Lone Star; (ii) the lease, use, operation, ownership, misuse, non-use, repair, replacement, or removal of the Facilities by Monsanto or Lone Star or any other party; (iii) the performance by Lone Star, its employees or agents of any of its obligations related to this letter agreement; or (iv) any failure of Lone Star or any of its employees or agents to observe and comply with any of Lone Star's duties or obligations under this letter agreement, regardless of the basis of liability or legal principle involved (including, without limitation, contract, warranty, negligence, strict liability, other tort, violation of law or otherwise). Upon the request of Monsanto or any other person or party covered by this indemnification, Lone Star shall, at its expense, cause any such claim, liabilities, suits or proceedings to be defended by counsel approved by Monsanto, and Monsanto shall have the right, at Lone Star's expense, to participate in the investigation, defense, settlement and/or compromise of same.

9. MISCELLANEOUS. The validity, interpretation and performance of this letter agreement and any dispute connected herewith will be governed and construed in accordance with the laws of the State of ^{Washington, D.C.} ~~Missouri~~. No conditions, usage of trade, course of dealing or performance, understanding or agreement shall be binding on the parties unless hereafter made in writing and signed by the party to be bound. If any term or provision of this letter agreement or any application thereof shall be invalid or unenforceable the remainder of this letter agreement or any other application of such term or provision shall not be affected thereby.

March 26, 1980

If you are in agreement with the foregoing, please indicate your acceptance by signing in the space provided below and returning one copy of this letter agreement to us.

MONSANTO COMPANY

By J. Bruce English ^{Lone Star}
3/27/80

Title General Manager
Specialty Chemicals Div.

Accepted and agreed to this
30 day of APRIL, 1980.

LONE STAR INDUSTRIES, INC.

By Tommy J. Velle

Title Plant Manager